

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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BRITTANY GOYETTE,

Plaintiff,  
vs.  
Civil Action No.  
1:07-CV-0886 (DEP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

ERWIN, MCCANE LAW FIRM  
23 Elk Street  
Albany, NY 12207

THOMAS C. ERWIN, ESQ.

FOR DEFENDANT

OFFICE OF GENERAL COUNSEL  
Social Security Administration  
26 Federal Plaza - Room 3904  
New York, NY 10278

VERNON NORWOOD, ESQ.

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

ORDER

Currently pending in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner,

pursuant to 42 U.S.C. § 405(g), are cross-motions for judgment on the pleadings.<sup>1</sup> Oral argument was conducted in connection with those motions on May 20, 2008 during a telephone conference which was both digitally recorded, and at which a court reporter was also present. At the close of argument I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in her appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

ORDERED, as follows:

- 1) Defendant's motion for judgment on the pleadings is

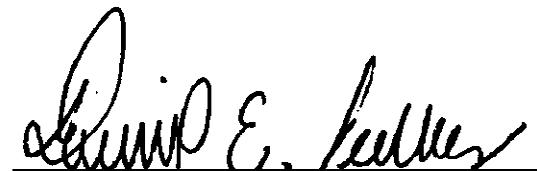
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<sup>1</sup> This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18 (formerly, General Order No. 43) which was issued by the Hon. Ralph W. Smith, Jr., Chief United States Magistrate Judge, on January 28, 1998, and subsequently amended and reissued by Chief District Judge Frederick J. Scullin, Jr., on September 12, 2003. Under that General Order an action such as this is considered procedurally, once issue has been joined, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

GRANTED.

2) The Commissioner's determination that plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is AFFIRMED.

3) The clerk is directed to enter judgment, based upon this determination, dismissing plaintiff's complaint in its entirety.



David E. Peebles  
U.S. Magistrate Judge

Dated: May 28, 2008  
Syracuse, NY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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BRITTANY GOYETTE,

Plaintiff,

vs.

07-cv-886

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

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MINUTES OF HEARING BY TELEPHONE  
held on May 20, 2008,  
at the United States District Courthouse,  
100 South Clinton Street, Syracuse, New York,  
the HONORABLE DAVID E. PEEBLES, Presiding.

A P P E A R A N C E S

FOR THE PLAINTIFF  
ERWIN, McCANE LAW FIRM  
Attorneys at Law  
23 Elk Street  
Albany, New York 12207  
BY: KEVIN McCANE, ESQ.

FOR THE DEFENDANT  
SOCIAL SECURITY ADMINISTRATION  
Office of Regional General Counsel  
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26 Federal Plaza  
New York, New York 10278  
BY: VERNON NORWOOD, ESQ.

*Eileen McDonough, RPR, CRR  
Official U.S. Court Reporter  
100 S. Clinton Street  
Syracuse, NY 13261  
(315) 234-8546*

1                   THE COURT: All right. Well, I've reviewed  
2 carefully the record and considered the arguments raised by  
3 the plaintiff. I have to say that I found the Administrative  
4 Law Judge's decision refreshingly well-formulated and I  
5 thought it was extremely defensible. In fact, I thought it  
6 was dead-on in terms of digesting the relevant information in  
7 the record and setting out findings regarding the extent, if  
8 any, of plaintiff's limitations in the specified areas, both  
9 under the "B" criteria of the two Listings involved and the  
10 six domains of the functional equivalent test.

11                  I've reviewed carefully the records, including  
12 Dr. Brand and Dr. Burky's reports, reports from Dr. Herrick  
13 and Dr. Blaber and Ms. Llewellyn-Southern. And it is clear  
14 to me, first, that plaintiff cannot meet two of the four  
15 age-appropriate criteria of the "B" Listings, in that she  
16 cannot establish marked impairment in any of the specified  
17 four areas, with the possible exception of age-appropriate  
18 social functioning. And so I think that the ALJ's decision  
19 rejecting the possibility of plaintiff meeting or medically  
20 equal Listings 112.04 and 112.08 is supported by substantial  
21 evidence.

22                  Turning to the issue of functional equivalent,  
23 the ALJ found, as you know, a marked impairment in only one  
24 of the six specified areas and no extreme impairment. I  
25 agree that the evidence supports a finding of impairment of

1 plaintiff's ability to interact with and relate with others,  
2 but I do not agree that it is extreme. The definition of  
3 extreme is that the limitation interferes very seriously with  
4 the claimant's ability to independently initiate, sustain or  
5 complete activities. I don't think that that burden has been  
6 met. And, in any event, I believe that a finding that the  
7 limitation in this domain area is only marked is supported by  
8 substantial evidence.

9 I similarly find that the ALJ's determination  
10 that the plaintiff does not suffer from marked limitation in  
11 any of the other five areas is supported by substantial  
12 evidence. I think that to the extent, if any, that  
13 plaintiff's mother's testimony was rejected as not credible,  
14 I think it was well explained and don't think that it would  
15 alter the result, in any event.

16 So, based on my review, I find that the proper  
17 legal principles were applied and that the Commissioner's  
18 determination is supported by substantial evidence and will,  
19 therefore, grant defendant's motion for judgment on the  
20 pleadings dismissing plaintiff's complaint. And we'll issue  
21 a short form order memorializing that determination and  
22 incorporating the bench decision in reference for purposes of  
23 any further appeal.

24 I appreciate you both participating and I  
25 thought the issues were extremely well briefed on both sides

1 and well argued.

2 MR. NORWOOD: Thank you, Judge.

3 MR. McCANE: Thank you for your time.

4 THE COURT: Have a good afternoon, Counsel.

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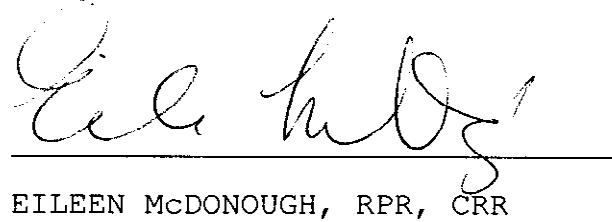
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C E R T I F I C A T I O N

I, EILEEN McDONOUGH, Registered Professional Reporter and Certified Realtime Reporter, DO HEREBY CERTIFY that I attended the foregoing proceedings, took stenographic notes of the same, that the foregoing is a true and correct copy of same and the whole thereof.



A handwritten signature in black ink, appearing to read "Eileen McDonough". The signature is written in a cursive style with a horizontal line underneath it.

EILEEN McDONOUGH, RPR, CRR